Peter G. Smith
Managing Director
Media Group
CIBC Inc.

Canadian Imperial
Bank of Commerce
425 Lexington Avenue
New York, NY 10017
(212) 856-3601
Fax (212) 856-3558

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The Commissioners
Federal Communications Commission
c/o The Office of the Secretary
Federal Communications Commission
1919 M Street
North Washington, DC 20554

Dear Sirs:

With reference to the comment request on the Notice of Proposed Rulemaking and Notice of Inquiry (MM Docket No. 92-51) dated April 1, 1992, we respectfully offer the following comments.

Please feel free to give me a call if you have any further question.

Sincerely,

P.G.S.

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The Commissioners
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Washington, DC 20554

In the Matter of	)	**MM Docket No. 92-51**
	)	
Review of the Commission's	)	
Regulations and Policies	)	
Affecting Investment	)	
in the Broadcasting	)	
Industry	)	

Dear Sirs:

With reference to the comment request on the Notice of Proposed Rulemaking and Notice of Inquiry (MM Docket No. 92-51) dated April 1, 1992, we respectfully offer the following comments, which are summarized as follows:

> **The US broadcasting industry is seriously undercapitalized.**
>
> **The current regulatory environment constrains capital investment in broadcasting.**
>
> **Several proposed regulatory changes could have a significant positive effect on the financial health of the broadcast industry and its ability to serve the public interest.**

Background

Canadian Imperial Bank of Commerce ("CIBC"; "the Bank") is one of the 70 largest financial institutions in the world and one of the largest in North America. In Canada, it ranks second in assets and offers a wide variety of retail, corporate and investment banking services. With offices in 24 countries, CIBC has the largest international network of any Canadian bank.

CIBC's total asset base as of April 30, 1992 stood at approximately US$107.6 billion. Through a US Bank Holding Company, CIBC's loans to business in the United States at April 30, 1992 were $6.9 billion, or 6.4% of the Bank's asset base.

CIBC has been a lender to the US broadcasting industry since 1986. During those five years, CIBC has been an active lender to both radio and television broadcasters. The Bank currently manages total commitments to the industry in excess of $400 million. This position ranks CIBC as one of the principal lenders to the US broadcasting industry.

CIBC's broadcasting business is comprised of loan facilities to both small entrepreneurial broadcasters and large multinational media enterprises. This sector exposure forms part of CIBC's significant loan commitments to the US media industry, which totalled in excess of $3 billion on April 30, 1992.

On April 22, 1991, CIBC forwarded comments to the Commission in response to and in support of the petition for declaratory ruling that lenders may take a limited security interest (MMB File #910221A), and reversionary interest (MMB File #8709210) in an FCC license.

In its April 22, 1991 letter, CIBC asserted that rational capital providers, including banks, will invest where they receive the highest risk-adjusted return on their capital. In the view of CIBC, the Commission rule prohibiting a lien on the broadcaster's principal asset, the rights associated with a broadcast license, places the broadcast industry at a competitive disadvantage with respect to other investment alternatives.

Furthermore, giving capital providers a role in the transfer of a broadcast license to an operator better qualified to operate the facility is consistent with the Commission's public interest objectives. A limited license lien would in no way restrict the Commission from giving appropriate consideration and permission for any broadcast license transfer.

<u>The Broadcast Industry is Seriously Undercapitalized</u>

Fourteen months later, the broadcasting industry continues to be in turmoil. Many broadcasters are seriously in debt or are in default of their loan agreements. A number of stations have ceased to operate. Station trading activity is very low, and the cost of bank financing, if available, is very high.[1]

Broadcast revenues have been extremely volatile, both across and within individual markets. With the development of alternative advertiser-supported media (including cable television, point of purchase promotion, and other advertiser-supported media), many markets simply have too many outlets to support the existing broadcast outlets. The current situation in broadcasting is not unlike that facing the real estate industry in the US -- overcapacity, value deflation, limited new investment, uncertain growth fundamentals.

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[1]See Paul Kagan Associates, Inc. <u>Broadcast Banker/Broker</u>, No. 97, May 26, 1992, p.1-2.

Unlike real estate, however, we do not believe broadcast revenue volatility is a short-term, cyclical phenomenon. There is a profound and permanent shift in the way advertisers deliver their message to their target market; media that do not meet advertisers' needs will not attract advertiser funds.

Broadcasters must be financially solvent in order to satisfy their shareholder and public interest obligations. Therefore, conventional methods of capitalizing the industry must change. This change must and will affect station values, debt collateral coverage, and the ability of existing investors to realize adequate (or any) returns on their investments.

Alternative Solutions

Responding to urgent industry requests and its own internal analysis, the Commission has proposed a series of rule modifications which may attract more capital to the broadcasting industry. In the radio broadcasting industry, these modifications include a relaxation of the restriction on multiple ownership of stations within a market (the so-called "duopoly rule"), and a modification the rules governing the number of stations owned. We expect the Commission to consider similar rule modifications for the television broadcasting industry.

CIBC applauds these rule changes. We believe that the duopoly rule will allow radio broadcasters to operate more efficiently, and, as a result, to price their advertising inventory more competitively. We also believe that increasing the number of radio stations owned will create similar operating efficiencies. However, we also believe that there are other alternatives worthy of consideration by the Commission.

Ownership Attribution

In our view, the present FCC ownership attribution rules constrain the logical (and inevitable) consolidation of the broadcast industry.

We believe that modification along the following lines will have a positive impact on capital flows to the broadcasting industry.

The Commission should raise the basic attribution benchmark from 5% to 10%.

The Commission should raise the existing attribution benchmark for passive institutional investors to 49%.

The Commission should broaden the class of investors eligible for passive institutional status to include commercial and investment banks.

The Commission should relax its insulation criteria for limited partnership attribution provided that limited partners are restricted from becoming involved in the management or operation of the broadcast station.

The Broadcast License Lien

As outlined in our comments of April 22, 1991, CIBC believes that serious consideration should be given to permitting a limited license lien on a broadcast license. In no way are we suggesting that the Commission's authority over license disposition be displaced. On the contrary, we firmly believe that the Commission's public interest mandate must be observed and respected. However, a license lien, or some other comparable security interest, will be a critical and unavoidable consideration for investors, particularly with smaller, entrepreneurial operators. Modification in this area would also address inconsistencies that exist between communications law and recent tax and bankruptcy court rulings.

The Commission has expressed real concern over the ability of smaller (and minority) operators to adequately capitalize their businesses. We believe smaller operators will continue to experience difficulty accessing any new third party debt financing without this kind of lender consideration.

It is difficult to quantify the benefit of a license lien rule modification. However, we are certain that failure to allow a license lien will further retard new capital investment in the broadcast industry. At the very least, broadcasters will not be able to maximize the opportunities presented by the rule modifications which the Commission is currently considering.

Investors compare the business risk profile of the broadcasting industry to that of other industries. The industry has a risk profile similar to that of industries where secured lending is common practice. Rational investing practice would, therefore, suggest that investment should flow to those industries where investors can best protect their investments.

Reversionary Interest

For many smaller broadcasters, station purchases and sales can only occur if the seller is willing to support the transaction by providing financing for the buyer. Without some kind of security or reversionary interest, seller risk is significantly increased and seller incentive is significantly reduced.

The issues relating to reversionary interest were clearly laid out in the Crowell and Moring petition last year. We recommend that the Commission should clarify its rules against reversionary interest by defining "right of reversion" so as to allow a seller of a broadcast station to regain control of a license subject to prior Commission approval.

Legal Disability, Trusteeship, and Executed Transfers of Control

There are numerous unfortunate examples in the broadcasting industry of borrowers holding their creditors at bay in troubled situations. Recent experience has demonstrated that creditors have few rights in these circumstances. Lenders have no realistic means of foreclosing on their collateral without triggering a bankruptcy proceeding. As a consequence, the likelihood of reaching a consentual agreeement between the debtor and creditors out of court, which is commonly achieved in other industries, is significantly diminished. Creditors (and their counsel) have searched in vain to establish a mechanism which would break the logjam created by these circumstances.

We believe that the Commission should expand the definition of legal disability under which the Commission would accept a transfer of control or assignment application signed only by the acquiring party. This modification would eliminate the need for the signature of the seller (ie. license holder) and the associated undue leverage over creditors in troubled credit situations.

The Commission should allow the use of trustees in default situations, in the way now permitted in tender offer/proxy proceedings.

The Commission should consider allowing a procedure whereby lenders may place in escrow a completed transfer of control or assignment application executed by the debtor and updated regularly.

Cross-Ownership and Foreign Ownership

The Commission requested suggestions for other rule modifications that, if made, would attract capital to the broadcasting industry.

We believe that the Commission should give consideration to influencing the modification of the rules regarding cross-ownership of broadcast and other media properties within a market. We also believe that the Commission should influence the rules limiting foreign ownership of broadcast properties.

Cross-ownership of broadcast and other media properties in a market offer to investors the same opportunities for efficiencies as the Commission's duopoly proposal. We believe that cross-ownership is a logical extension of the duopoly rule. Concerns about local control are addressed by the Commission through its periodic license review process.

We recognize that foreign ownership of broadcast properties is a politically charged issue. However, the international market is a very large, untapped source of liquidity for the industry, and it deserves consideration. Other media industries in the US, most notably the publishing industry, have derived significant benefit from international investment without adverse consequences.

At the very least, the Commission should consider modifying the definition of foreign ownership to distinguish between operating owners and foreign lenders and investors, who are only looking to achieve greater control over their investments.

We recognize that these recommendations fall somewhat outside the mandate of the Commission. However, we also recognize that the Commission is very influential in the establishment and modification of public policy related to its mandate.

<u>Summary</u>

The Commission is clearly concerned that the rules governing the broadcasting industry not impede the industry's ability to compete effectively in a dynamic environment.

It is equally clear to us that, as currently regulated, the broadcasting industry in the US will not be able to attract the capital needed to grow and prosper. In the communications industry alone, investors have many attractive investment options that allow them greater control over their investment than is available in the broadcasting industry. When industry fundamentals are under pressure as they are in broadcasting today, what incentive do investors have if they have no say in the disposition of their investment?

In order for the broadcasting industry to survive, consolidation is inevitable. The radio industry has already taken steps to consolidate through local marketing agreements and other types of joint operating agreements; similar efforts will be made in the television industry. These are compelling market indicators for the Commission to recognize and address.

We believe that the current broadcast ownership rules raise the risk profile of the industry by keeping individual operators small, limiting investor control over their investments, and constraining capital inflows to the industry. Any change the Commission can influence, or make, that will improve capital inflows to the industry would be welcomed by owners and investors.

If you have any questions or you would like further clarification of our comments, please do not hesitate to contact me.

Very truly yours,

P.G.